
CHAPTER 1. GENERAL PROVISIONS

1-1 Purpose

This Handbook implements Federal statutes and regulations of the Office of Personnel Management (OPM) and the Merit Systems Protection Board (MSPB) that apply when management takes action to remove, suspend, furlough without pay for 30 days or less, or reduce an employee in grade or pay. Some negotiated agreements may contain provisions which supersede this Handbook. General guidance on less severe penalties (official reprimands, etc.) is contained in paragraph 4-3.

Requirements stated in this Handbook are consistent with law, regulations, and Agency policy applicable at the time of its issuance. It is essential that current rules be researched, and that this Handbook be used in conjunction with applicable negotiated agreements for employees in an exclusive bargaining unit, in order to ensure adherence to unique provisions, procedures, and timeframes.

1-2 Authorities and References

- A. Title 5, United States Code
- B. Office of Personnel Management Regulations, 5 CFR Parts 752 and 792.

1-3 Exceptions to Handbook Provisions

The Director, Office of Human Resources, may authorize waivers to the provisions of this Handbook insofar as the waivers are consistent with applicable laws, regulations, and negotiated agreements.

1-4 Definitions

For purposes of this issuance, the following definitions are used:

- A. **Administrative Leave.** An excused absence from duty, administratively authorized, without loss of pay and without charge to leave. It is the Department's practice that the Director, Office of Human Resources, or in the field, the ASC Human Resources Director, must approve requests by program offices to place an employee on administrative leave to cover the period before the proposal notice is issued, when the administrative leave is expected to exceed 3 days. Such requests must be made in

writing to the Director, Office of Human Resources, or ASC Human Resources Director, and they must contain sufficient justification to support the need.

- B. **Adverse Action.** A personnel action taken by HUD management against an employee to effect his/her removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.
- C. **Aggravating Factors.** Actions, circumstances, or events which increase or magnify the seriousness or severity of the employee's offense against the employer-employee relationship.
- D. **Appeal.** A request by an employee to the MSPB for review of a suspension of more than 14 days, change to lower grade or pay, removal, or furlough of 30 days or less taken under 5 U.S.C. Chapter 75.
- E. **Days.** Calendar days.
- F. **Deciding Official.** A HUD supervisor or manager who makes a decision on a proposed adverse action or disciplinary action.
- G. **Demotion.** The involuntary reduction of an employee in pay and grade.
- H. **Disciplinary Action.** A memorandum of warning, official reprimand, or suspension up to 14 calendar days.
- I. **Excused Absence.** Absence from duty, administratively authorized, without loss of pay and without charge to leave.
- J. **Furlough.** Placing an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.
- K. **Harmful Error.** Error by the Department in the application of its procedures that is likely to have caused the Department to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.
- L. **Indefinite Suspension.** The placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite

suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

- M. **Mitigating Factors.** Actions, circumstances, or events which lessen, moderate, reduce, or abate the seriousness or severity of the employee's offense.
- N. **MSPB.** Merit Systems Protection Board.
- O. **Nexus.** The connection between the specific misconduct and the efficiency of the Federal service.
- P. **OPM.** Office of Personnel Management.
- Q. **Proposing Official.** A HUD supervisor or manager who proposes an adverse or disciplinary action.
- R. **Reasonable Accommodation.** An adjustment or modification to the work environment which would enable a qualified individual with disabilities to perform the essential duties of his/her position.
- S. **Reduction in Grade.** The involuntary assignment of an employee to a position at a lower classification or job grading level.
- T. **Reduction in Pay.** The involuntary reduction in basic pay.
- U. **Removal.** The involuntary separation of an employee from employment with the Department and Federal service except when taken as a reduction-in-force (RIF) action or at the expiration of appointment.
- V. **Standards of Ethical Conduct.** The Standards of Ethical Conduct regulations issued by the Office of Government Ethics and found at 5 CFR Part 2635; the Executive Branch Financial Disclosures Qualified Trusts, and Certificates of Divestiture regulations issued by the Office of Government Ethics and found at 5 CFR Part 2634; the Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria regulations issued by the Office of Government Ethics and found at 5 CFR Part 2636; and HUD's Standards of

Ethical Conduct regulations found at 24 CFR Part 0.735 and any HUD Employee Responsibilities and Conduct Addendum or supplemental regulations to the regulations of the Office of Government Ethics.

W. **Suspension.** The temporary placement of an employee in a nonduty, nonpay status for disciplinary reasons.

1-5 Employees Covered

The categories of employees covered, as well as employees not covered, are listed in Appendix 2.

1-6 Actions Covered

The following actions are subject to the policies and procedures of this Handbook.

A. **Misconduct:**

1. Suspensions of 14 days or less (Chapter 2)
2. Suspensions of more than 14 days (Chapter 3)
3. Removal (Chapter 3)
4. Reduction in grade (Chapter 3)
5. Reduction in pay (Chapter 3)

B. **Other:**

1. Furlough without pay for 30 days or less (Chapter 3)
2. Actions that involve both performance and non-performance related factors
3. Performance-based action that is not taken under 5 CFR Part 432. Before initiating a performance-based disciplinary action, the policy and procedural requirements of Handbook 0432.01, Performance, and those of this Handbook must be considered. Of particular importance, note the differences in the evidentiary standards or "degree of proof" required under two pertinent regulatory procedures in order to support the action. 5 CFR Part 432 requires **substantial evidence**; conversely, 5 CFR Part 752 requires **preponderance of the evidence**.

1-7 Actions Not Covered

A. A reduction-in-force action.

-
- B. A suspension or removal in the interest of national security.
 - C. The separation of a probationary employee.
 - D. The reduction in grade or pay of a supervisor or manager who fails to successfully complete a new probationary period as a supervisor or manager if such reduction is to the grade held immediately before becoming a supervisor or manager.
 - E. An action which entitles an employee to grade retention, and an action to terminate this entitlement.
 - F. Voluntary action(s) initiated by the employee.
 - G. Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.
 - H. An action which terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the Department informed the employee that it was to be of limited duration.
 - I. Cancellation of a promotion to a position not classified prior to the promotion.
 - J. Reduction of an employee's rate of pay from a rate which is contrary to a rate allowed or permitted by law or regulation.
 - K. An action against a reemployed annuitant.
 - L. An action imposed by MSPB under authority of 5 U.S.C. 1206.
 - M. A reduction in grade or removal based on unacceptable performance.
 - N. An action taken or directed by the Office of Personnel Management based on a suitability determination.

1-8 General Standards

- A. Adverse and disciplinary actions may be taken against an employee covered by this Handbook only for such cause as will promote the efficiency of the Federal service.

- B. Adverse and disciplinary actions may not be taken against an employee if the action is based on unlawful discrimination or a personnel practice prohibited by any law, rule, or regulation.

1-9 Records

- A. The Department is required to make as part of its records copies of the following documents:
 - 1. The Notice of Proposed Adverse or Disciplinary Action;
 - 2. The employee's answer when written;
 - 3. A summary of any oral answer when given;
 - 4. The Decision Notice; and
 - 5. The material relied on by HUD to support the reasons in the Proposal and Decision Notices.
- B. These records shall be furnished to the MSPB upon its request and to the affected employee upon the request of the employee or his/her designated representative.
- C. Case files should be destroyed after 4 years unless a request is received to retain the records for use in another forum, i.e., EEO complaint.
- D. Appropriate personnel specialists in each Administrative Service Center (ASC) and in Headquarters Labor and Employee Relations Division (LERD) are responsible for establishing and maintaining the Departmental records relating to actions covered by this Handbook.

1-10 Delegations of Authority

- A. Any supervisor or manager at or above the Branch Chief level in Headquarters and the Field is authorized to issue a notice of proposed suspension of 14 days or less or adverse action against an employee for reasons of misconduct or performance-based action taken under 5 CFR 752. The proposal is to be based on factual information.

-
- B. The decision on a proposed suspension of 14 days or less or adverse action must be made by an organizationally higher level official of the Department, when that exists, than the official who proposed the adverse or disciplinary action. A typical example of the Deciding Official would be the Division Director when the Branch Chief proposed the action.
 - C. When the Secretary or Deputy Secretary is the Proposing Official, he/she may also serve as the Deciding Official.
 - D. When the Deputy Secretary is both the Proposing and Deciding Official, the written decision must be concurred in by either an organizationally higher level official, when that exists or the Secretary.
 - E. When the Secretary or Deputy Secretary is the Deciding Official, either may designate:
 - 1. An appropriate official to serve in his/her stead as Deciding Official. The official designated must be at a level equivalent to, or higher than, the official who proposed the action; or
 - 2. An appropriate official to handle the receipt of replies, both written and oral, to obtain whatever additional information is deemed appropriate, and make a pre-decision recommendation to the Deciding Official. The designee may not be the Proposing Official or anyone subordinate to the Proposing Official.
 - F. The Assistant to the Secretary for Field Management shall issue a decision notice in the case of an employee to whom a Secretary's Representative issued a notice of proposed action.
 - G. Refer to the Department's current applicable Delegations of Authority for guidance when initiating or taking an action covered by this Handbook.

1-11 Pre-Decision Review Option

- A. Before issuing a notice, the Proposing or Deciding Official, as appropriate, may designate an appropriate official to carry out a review of the facts or circumstances of the events that led to the disciplinary action in such a manner and form as prescribed. The reviewing official shall report the results to the designating official.
 - B. The official who is designated to carry out a review of the proposed action shall be an
-

official of the Department who took no part in the events that led to issuance of the Notice of Proposed Adverse Action, and who is not under the jurisdiction of the official who proposed the adverse action.

- C. The Proposing and Deciding Officials are not required to carry out a review through a designated official. The decision to carry out such a review is discretionary and rests with the Proposing or Deciding Official, as appropriate.

1-12 Distribution of Proposal and Decision Notices

Copies of proposal and decision notices shall be furnished to the following:

- A. The original for the employee;
- B. The representative, if any (decision notice only);
- C. The Proposing and Deciding Officials;
- D. In Headquarters, LERD; in the Field, the appropriate ASC Labor and Employee Relations Branch;
- E. Appropriate administrative officer; and
- F. Appropriate Field Assistant General Counsel or in Headquarters, the Assistant General Counsel for Human Resources Law (to alert counsel in the event the action is appealed to the MSPB or reviewed in a negotiated or administrative grievance procedure).